

Amendment No. 2 to SB2664

Cooper  
Signature of Sponsor

**AMEND Senate Bill No. 2664\***

**House Bill No. 3067**

**FILED**

Date \_\_\_\_\_

Time \_\_\_\_\_

Clerk \_\_\_\_\_

Comm. Amdt. \_\_\_\_\_

by deleting all language following the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 135, is amended by adding Sections 2 through 8 of this act as a new part thereto.

SECTION 2. This act may be cited as the "Tennessee Agricultural Ethanol Production Act of 2004".

SECTION 3. It is hereby the express intent and public purpose of the general assembly to authorize the establishment of cooperative efforts between the state and private enterprise in order to:

(1) Encourage the utilization of corn and other agricultural products for energy purposes and thereby encourage the establishment of a substantial market for agricultural products in Tennessee;

(2) Revive economically depressed areas and create a significant number of new jobs;

(3) Encourage participation of the private sector in the development of a production system for alcohol fuels within the state of Tennessee;

(4) Promote the use of clean, efficient and renewable energy in the state of Tennessee and the United States;

(5) Attract new industry to Tennessee and thereby encourage the investment of capital in Tennessee; and

(6) Reduce the dependence of the state of Tennessee and the United States on imported petroleum through the use of alternate, renewable energy sources.

SECTION 4. As used in this act, unless the context otherwise requires:

(1) "Applicant" means a person who applies for a permit as an ethanol dealer participant to receive production incentives under this act;

(2) "Biodiesel (mono-alkyl-esters)" means a cleaner-burning fuel made from renewable resources such as vegetable oils, animal fats, or recycled restaurant greases;

(3) "Commissioner" means the commissioner of revenue for the state of Tennessee;

(4) "Dealer" means any person, other than a distributor, who engages in the business in this state of distributing or selling gasoline or distillate within this state, and also any person who uses or consumes gasoline (except use or consumption in interstate commerce) when the gasoline has not previously been the measure of the privilege tax imposed by this chapter.

(5) "Department" means the department of revenue for the state of Tennessee;

(6) "Distributor" means any person who engages in the business in this state of refining, manufacturing, producing, or compounding gasoline or distillate, and selling or storing the same in this state; and it also means any person who engages in the business in this state of transporting, importing or causing to be imported, gasoline or distillate into this state, and distributing, storing, or making original sales of the same in this state, for any purpose whatsoever;

(7) "Ethanol" means ethyl alcohol of a purity of at least ninety-nine percent (99%) denatured in conformity with one (1) of the approved methods sets forth by the United States department of the treasury, bureau of alcohol, tobacco and firearms and derived from agricultural products which have been shipped to the ethyl alcohol producer from a grain elevator or similar facility located within the state of Tennessee and which have been fermented and finished to fuel grade in the state of Tennessee;

(8) "Gasohol" means a motor fuel containing a minimum of ten percent (10%) blend of ethanol and ninety percent (90%) unleaded gasoline or a biodiesel fuel;

(9) "Jobber" means any person purchasing gasoline from a distributor or dealer and reselling the greater part of it to retailers;

(10) "Permitee" means an applicant who has been approved by the commissioner of revenue to receive dealer incentives as an ethanol dealer participant under this act; and

(11) "Retailer" means any person purchasing gasoline from a distributor or dealer, or from a jobber, and reselling the greater part of it to users or consumers.

SECTION 5. In order to qualify as a permittee under this act, an applicant must submit proof on a form prescribed by the commissioner that the applicant is a jobber who purchases gasohol for resale to retailers.

#### SECTION 6.

(a) There shall be paid by the department to each permittee an incentive of thirty cents (\$.30) per gallon for each gallon of gasohol sold to a retailer. The permittee may apply monthly for the incentive payments by the twentieth day of each month on forms prescribed by the commissioner based upon the number of gallons of gasohol sold to retailers during the preceding month.

(b) No more than six million dollars (\$6,000,000) may be appropriated to the department in any fiscal year for the incentives provided to permittees in subsection (a).

(c) A permittee shall, at the time of making each sale of gasohol to a gasoline retailer make out and deliver to the retailer a prenumbered invoice on which the permittee shall enter the full name and complete address of the retailer and the number of gallons of gasohol sold. This invoice may be used by a permittee as its proof of sale to obtain the production incentives authorized by this act.

(d) A gasoline distributor or dealer shall, at the time of having gasohol shipped to it from a producer, obtain from the shipper an invoice on which the shipper shall show its full name and address and on which the shipper shall enter the full name and address of the buyer-distributor/dealer, the type of products purchased and the number of gallons of products purchased.

(e)(1) Except as provided in subdivision (2), permittees shall receive production incentives authorized by this act only if the corn used in the production of ethanol is produced in Tennessee.

(2) If corn from Tennessee is not available for the production of ethanol corn from other states may then be used.

SECTION 7. In enforcing the provisions of this act, the commissioner is authorized to audit the proofs of sale of gasohol and the invoices for the shipment of agricultural products that are maintained by the permittee.

SECTION 8. The provisions of this act shall only be applicable if the air pollution control board implements an ethanol program as a means to obtain compliance with clean air standards set by the Environmental Protection Agency and if the Tennessee general assembly appropriates the funds necessary to implement the provisions of this act by June 30, 2005.

SECTION 9. If any provision of this act or its application to any person or circumstance is held invalid such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 10. This act shall take effect July 1, 2004, the public welfare requiring it.